

Tackling radicalisation: the limitations of the anti-radicalisation Prevent duty

David Barrett¹

The past decade has seen the rise of a new threat, a state's own radicalised citizens committing terrorist atrocities for a global cause. To respond to this threat, successive UK governments have introduced Prevent strategies in an attempt to counter the factors that lead to radicalisation. In 2015 the Coalition Government went further, introducing a specific legal duty (s 26(1) Counter-Terrorism and Security Act 2015). This duty requires specified authorities to have due regard to the need to prevent people from being drawn into terrorism. This article explores the requirements of the duty and its compatibility with the ECHR. Overall it is argued that rather than building on the Prevent strategies, the Prevent Duty has both accentuated the limitations of the strategies, while at the same time also creating new problems, both of which are likely to prove counter-productive and thus ultimately undermine the UK's ability to prevent terrorism.

Introduction

The 2005 London bombings in which 52 innocent people lost their lives illustrated a new threat to countries in the West, a state's own radicalised citizens committing terrorist atrocities on home soil for a global cause. This was followed by the 2009 Fort Hood shootings in Texas where 13 people were killed, the 2011 Norway Attacks in which 77 individuals were killed, the 2013 Boston Marathon Bombings in which 3 people were killed and the killing in the UK of Lee Rigby in 2013. By 2014 the total number of people killed in worldwide terrorist attacks (32,700), nearly doubled the total in 2013.² This has increased further in 2015 and 2016 with numerous high profile terrorist attacks including: the Charlie Hebdo shootings in which 11 people died; the Charleston Church Shooting in which 9 people died; bombings in Ankara and Suruç in which 208 people were killed, the Paris Attacks in which 130 people were killed and the Brussels attacks in which 35 people were killed. All of these attacks were committed by the state's own citizens. At the same time, states have also seen their radicalised citizens go to Iraq and Syria to fight for Islamic State. According to the

¹ David is a lecturer at Nottingham Law School, Nottingham Trent University.

² The Data Team, 'The Plague of Global Terrorism' *The Economist* (London, 18 November 2015) <<http://www.economist.com/blogs/graphicdetail/2015/11/daily-chart-12>> accessed 7 January 2016.

Foreign Secretary, from the UK alone over 1,000 people have sought to travel from the UK to Syria to join IS.³

In order to respond to the increased risk of terrorism generally, but particularly the threat of home-grown terrorists, the UK introduced CONTEST in 2003, which was subsequently revamped in 2006, 2009 and 2011. CONTEST's response to counter terrorism utilises four workstreams: Prevent, Pursue, Protect and Prepare. Pursue focuses on stopping terrorist attacks, Protect on strengthening protection against terrorist attacks and Prepare on mitigating the impact of a terrorist attack. While these are all based on the presumption of the existence of terrorists who want to commit terrorist atrocities in the UK, Prevent is different, focusing instead on intervening before individuals become terrorists or begin to support terrorism.⁴ It aims to do this by tackling the causes of radicalisation and de-radicalising any individual that has already begun to be radicalised. To support the previous work done under the Prevent strategies, section 26 of the Counter-Terrorism and Security Act 2015 created a general duty which requires that: 'A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism'. This is novel as for the first time, many front-line public sector workers (e.g. doctors, nurses, teachers, lunchtime supervisors) are engaged in preventing terrorism. This article explores what the duty requires. It begins by discussing radicalisation, factors that are said to lead to it and how it can be addressed. It then outlines how the three iterations of Prevent strategies (2006, 2009 and 2011) preceding the duty have sought to tackle radicalisation. It goes on to explore what the Prevent Duty requires and argues that its introduction is counter-productive as it has accentuated the limitations of the Prevent strategies while at the same time creating new problems all of which hamper the UK's ability to tackle radicalisation. It concludes by considering the human rights compatibility of Prevent.

Radicalisation

³ P. Wintour and S. Malik, "Hundreds of Britons caught trying to join jihadis, says foreign secretary" (January 15, 2016) *The Guardian*, <https://www.theguardian.com/world/2016/jan/15/foreign-secretary-600-uk-citizens-isis-syria-philip-hammond> [Accessed June 23, 2016].

⁴ HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, para. 3.8.

Before going on to consider the Prevent Duty it is important to first discuss what radicalisation is, how it arises and how it can be countered. It should be noted at the outset that there is no clear, universally accepted definition of radicalisation. Neumann distinguishes between two different conceptions of radicalisation, cognitive radicalisation and behavioural radicalisation. The former focuses upon extreme beliefs while the latter focuses upon extreme behaviour.⁵ Thus when attempting to tackle cognitive radicalisation states intervene much earlier (when individuals exhibit extreme beliefs) rather than waiting until individuals exhibit extreme behaviour (behavioural radicalisation). Focusing on cognitive radicalisation can be problematic as individuals can hold radical views without being a threat to society, in fact the great majority of radicals do not become terrorists. However, the danger is that by waiting for individuals to exhibit extreme behaviour (i.e. focusing on behavioural radicalisation) it may be too late to prevent terrorist attacks. Consequently, governments around the world have struggled over which conception of radicalisation to focus on, with the UK and US historically focusing on behavioural radicalisation and continental Europe focusing upon cognitive radicalisation. However, in recent years the UK has moved to increasingly focus upon cognitive radicalisation (and the Prevent Duty is an attempt to move in this direction).

There is even less agreement about what causes radicalisation with the only thing that researchers agree on being that there are many paths to radicalisation and there is no single profile of a terrorist.⁶ Types of causes can be split into ones occurring at the micro, meso and macro-level.⁷ Micro-level causes include identity problems, failed integration, feelings of alienation, marginalisation, experiencing discrimination, relative deprivation, feelings of humiliation, stigmatisation, rejection, dissatisfaction, age and gender (radicals are most likely to be young males between mid-teens and mid-twenties), inability to reconcile dual identities (e.g. Western citizenship with Muslim

⁵ P. Neumann, "The trouble with radicalization" (2013) 89(4) *International Affairs* 873, 873.

⁶ For example K. Christmann, "Preventing Religious Radicalisation and Violent Extremism: A Systematic Review of the Research Evidence" (London: Youth Justice Board, 2012), p. 31; A. Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review" (The Hague: International Centre for Counter-Terrorism, 2013), p. 21.

⁷ J. Bartlett, J. Birdwell and M. King, "The Edge of Violence: a Radical Approach to Extremism" (London: DEMOS, 2010), p. 19; A. Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review" (The Hague: International Centre for Counter-Terrorism, 2013), p. 4.

religion), pathology (e.g. mental illness) and emotional vulnerability.⁸ Meso-level causes are related to others and include a supportive or complicit social circle, gaining rewards from group membership (such as status, respect and authority) and close social ties with individuals in a similar position or possessing similar views.⁹ Finally macro-level causes are related to governments and societies and includes the role of government and society at home and abroad (e.g. foreign policy decisions and military interventions), public opinion, tense majority-minority relationships and lack of socio-economic opportunities.¹⁰ There are lots of conflicting theories about how these factors combine but what all theorists agree on is that radicalisation is a gradual process (although there may exist catalysts that accelerate this process) and that there will be stages of visible individual change.¹¹ As a result it is believed possible for governments to both counter the factors that are said to lead to radicalisation before radicalisation occurs (counter-radicalisation), while at the same time identifying individuals who are becoming radicalised and intervening during the process to prevent radicalisation (de-radicalisation). The Prevent limb of the UK's counter-terrorism strategy attempts to counter-radicalise while also identifying those who are becoming radicalised and referring them to Channel, the government's de-radicalisation programme.

History of Prevent

There have been three different iterations of Prevent strategy (2006, 2009 and 2011) that have built upon each other. There have however, also been a number of

⁸ W. Laqueur, "The Terrorism to Come" (2004) (Aug-Sept) *Policy Review* 51; O. Roy, *Globalised Islam: The search for a new Ummah* (London: Hurst & Co, 2004); L. Wadgy, "The Psychology of Extremism and Terrorism: A Middle-Eastern Perspective" (2007) 12(2) *Aggression and Violent Behaviour* 141; K. Christmann, "Preventing Religious Radicalisation and Violent Extremism: A Systematic Review of the Research Evidence" (London: Youth Justice Board, 2012), p. 23; A. Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review" (The Hague: International Centre for Counter-Terrorism, 2013), p. 4.

⁹ M. Sageman, *Understanding Terror Networks* (Philadelphia: University of Pennsylvania Press, 2004); J. Horgan, "From Profiles to Pathways and Roots to Routes: Perspectives from Psychology on Radicalization into Terrorism" (2008) 618(1) *The Annals of the American Academy of Political and Social Science* 80; M. Sageman, *Leaderless Jihad: terror networks in the twenty-first century* (Philadelphia: University of Pennsylvania Press, 2008).

¹⁰ D. Noricks, "The Root Causes of Terrorism", in P. Davis and K. Cragin (eds.), *Social Science for Counterterrorism: Putting the Pieces Together* (Santa Monica: RAND, 2009); J. Bartlett, J. Birdwell and M. King, "The Edge of Violence: a Radical Approach to Extremism" (London: DEMOS, 2010), p. 18; A. Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review" (The Hague: International Centre for Counter-Terrorism, 2013), p. 4.

¹¹ K. Christmann, "Preventing Religious Radicalisation and Violent Extremism: A Systematic Review of the Research Evidence" (London: Youth Justice Board, 2012) pp. 10, 21.

significant changes. First, there has been an expansion of the range of individuals who are the focus of Prevent. The first Prevent strategy in 2006, under the New Labour government, recognised radicalised Islamist terrorists as the principal terrorist threat so focused Prevent solely on addressing Islamic radicalisation.¹² This focus was maintained in the 2009 strategy.¹³ However, the 2011 Prevent strategy, put forward by the Coalition government, focused upon a wider conception of radicalisation, which, while recognising Islamic terrorism as the biggest threat to the UK, also accepted the need for Prevent to focus upon other forms of terrorism such as extreme right-wing terrorism (increasingly driven by Islamophobia).¹⁴

There has also been an increased focus on individual factors that lead to radicalisation, coupled with the removal of a focus on societal problems. The 2006 strategy recognised that there were a range of factors that led to radicalisation and that no single factor predominates. It accepted that a sense of personal alienation or community disadvantage, arising from socio-economic factors such as discrimination, social exclusion and lack of opportunity could lead to radicalisation. Consequently, the Strategy recognised that the 'first area of action to counter radicalisation lies in addressing structural problems in the UK and elsewhere that may contribute to radicalisation'.¹⁵ This was reiterated in the 2009 strategy, although there was also an increased focus upon individual psychological factors (such as a crisis in identity and feelings of not being accepted or belonging).¹⁶ By 2011 there is no longer any recognition of the role of structural factors (such as discrimination, socio-economic inequality) with the majority of focus being on individual factors.¹⁷

Additionally, the 2009 and 2011 strategies significantly increased the role of public bodies in tackling radicalisation. For example the 2009 strategy recognised that the Prevent programme 'depends not only on communities but on local authorities, education, health, cultural and social services, UKBA [UK Border Agency] and those

¹² HM Government, *Countering International Terrorism: The United Kingdom's Strategy*, p. 6.

¹³ HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, p. 88.

¹⁴ HM Government, *Prevent Strategy*, pp. 20-21, 25.

¹⁵ HM Government, *Countering International Terrorism: The United Kingdom's Strategy*, p. 11.

¹⁶ HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, pp. 44, 91.

¹⁷ HM Government, *Prevent Strategy*.

responsible for offender management'.¹⁸ Coupled with this there has been a move away from the centralisation of Prevent to increased focus upon local delivery: 'Prevent is primarily a local strategy and while the Home Office will retain overall responsibility, it will largely be implemented in prisons, colleges and universities, by our partners in the Devolved Administrations, local authorities, the police and community organisations'.¹⁹

Furthermore, there has been an increased focus upon measuring success. The 2006 strategy argued that by its nature, the Prevent programme, is a long-term commitment, which will take time to show concrete results.²⁰ However, by 2009 there were targets for local authorities and the police.²¹ The 2011 strategy goes further focusing on funding only those activities that show impact and outcomes (i.e. real results such as the number of people deterred from radicalisation) and not those that simply focus on outputs (i.e. the number of people who have been subject to Prevent activities).²² Finally, the 2011 strategy departs from Labour's focus upon violent extremism to focus upon all forms of extremism (both violent and non-violent).²³

Therefore, by the time the Prevent Duty came into force Prevent focused on wider forms of radicalisation than merely Islamic radicalisation (including far-right radicalisation too), focused on largely micro and meso-level causes (ignoring macro-level societal causes), had drastically increased what was required of public bodies, was increasingly requiring demonstrable results and was focusing on all forms of extremism rather than just violent extremism.

Since their introduction the Prevent strategies have achieved some success with partnership with local Muslim communities increasing, a strengthening of Muslim civil

¹⁸ HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, p. 84. This can also be seen in the 2011 strategy: HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, p. 112.

¹⁹ HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, p. 112.

²⁰ HM Government, *Countering International Terrorism: The United Kingdom's Strategy*, p. 16.

²¹ HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, p. 86.

²² HM Government, *Prevent Strategy*, p. 37.

²³ HM Government, *Prevent Strategy*, p. 25 cf HM Government, *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*, p. 43.

society and the development of contact with more Muslim young people.²⁴ The strategies were not perfect though, focusing almost solely on Muslims. Many professionals implementing the strategies also lacked an understanding of factors leading to radicalisation and possible methods to counter it, so thus tended to totally avoid taking any action or took a very rigid approach which conflicted with their professional training (e.g. reporting individuals straight away rather than discussing their concerns with them).²⁵ Finally, efforts to implement Prevent conflicted with other related strategies that were addressing the macro-level causes of radicalisation (such as the community cohesion strategy).²⁶ A key advantage of the Prevent strategies though was that a policy approach allowed actors to be flexible and thus implement it in a way that would overcome or minimise many of these limitations. For example, many local authorities did not term what they were doing as 'Prevent' to avoid alienating groups and incorporated it into other policies such as community cohesion.²⁷ The rest of the article will discuss what is required by Prevent Duty. It will argue that the legalisation of Prevent has removed the flexibility permitted by a policy approach, which has intensified the limitations of the Prevent strategies while at the same time creating new problems which undermine the UK's effort to tackle radicalisation.

The Prevent Duty

The Prevent Duty was introduced in the Counter-Terrorism and Security Act 2015 in order to extend coverage to all bodies whose staff work on the front line with those at risk from radicalisation, to ensure greater consistency between institutions and to ensure organisations recognise their responsibilities.²⁸ It came into force on 1st July 2015 and requires all specified authorities in the exercise of their functions to 'have

²⁴ P. Thomas, "Prevent and Community Cohesion in Britain – The Worst of All Possible Worlds?", in C. Baker-Beall, C. Heath-Kelly and L. Jarvis (eds.), *Counter-Radicalisation: Critical Perspectives* (Abingdon: Routledge, 2015).

²⁵ P. Thomas, "Between Two Stools? The Government's 'Preventing Violent Extremism' Agenda" (2009) 80(2) *The Political Quarterly* 282, 288.

²⁶ P. Thomas, "Failed and Friendless: The UK's 'Preventing Violent Extremism' Programme" (2010) 12 *The British Journal of Politics and International Relations* 442.

²⁷ P. Thomas, "Prevent and Community Cohesion in Britain – The Worst of All Possible Worlds?", in C. Baker-Beall, C. Heath-Kelly and L. Jarvis (eds.), *Counter-Radicalisation: Critical Perspectives* (Abingdon: Routledge, 2015).

²⁸ HC Deb 2nd December 2014, vol 589, cols 215, 270-271 (Theresa May, Secretary of State for the Home Department and James Brokenshire, Minister for Security and Immigration).

due regard to the need to prevent people from being drawn into terrorism'.²⁹ There are a number of aspects to the duty which will be discussed: (A) which public bodies are specified authorities; (B) what due regard requires; (C) which individuals are to be prevented from being drawn into terrorism; and (D) how the duty can be enforced.

A. *Who is a specified authority?*

Specified authorities are listed in Schedule 6 Part 1 and include: local government;³⁰ criminal justice bodies (such as prisons);³¹ education bodies (which includes nurseries, schools and universities);³² health and social care bodies;³³ and the police.³⁴ The Secretary of State has the power to extend the list of authorities subject to the duty with the only limitation being that there are certain bodies (e.g. Parliament, the General Synod of the Church of England and the intelligence and security services) and certain functions (i.e. judicial functions) that can never be subject of the duty.³⁵ Any additions to the list of specified authorities must be approved by Parliament.³⁶

As mentioned earlier all of these bodies are subject to the duty because their staff are believed likely to come into contact with those at risk from radicalisation and thus can best pick up signs that they are vulnerable to, or are becoming, radicalised. For example, it is believed that teachers in a school should notice if a student is marginalised from their peers, if they are being bullied or are dissatisfied with life. Additionally, hospital staff should notice if individuals are presenting signs of mental

²⁹ Counter-Terrorism and Security Act 2015, s 26(1).

³⁰ This includes county/district councils in England; the Greater London Authority, London borough councils; the Common Council of the City of London; the Council of the Isles of Scilly; a county council or county borough council in Wales; and any person exercising a function of a best value authority under section 1(2) of the Local Government Act 1999 by virtue of direction by the Secretary of State (under section 15).

³¹ This includes the governor/director of a prison in England and Wales; the governor/director of a young offender institution or secure training centre; the principal of a secure college; and the provider of probation services.

³² This includes the proprietors of both state and independent schools and nurseries, further education colleges, universities and childminders.

³³ These include an NHS Trust, NHS Foundation Trust, Local Health Board in Wales, a Community Health Council in Wales and the Board of Community Health Councils in Wales.

³⁴ This includes a chief officer of police, the British Transport Police, a Port Police Force, the Common Council of the City of London, a police and crime commissioner, the Mayor's Office for Policing and Crime and the Civil Nuclear Police Authority.

³⁵ Counter-Terrorism and Security Act 2015 ss 26(4), 27.

³⁶ Counter-Terrorism and Security Act 2015, s 27(4).

illness or emotional vulnerability. Staff at universities should also notice if groups of students form, whose beliefs or behaviour are worrying.

Despite this, there are a number of limitations and contradictions about the bodies subject to the duty. Thus a number of relevant bodies are excluded. For examples GPs are not subject to the duty, yet individuals are far more likely to visit their GP than a hospital. It also excludes many community organisations such as charities, counsellors, youth groups and religious organisations. Yet, individuals are much more prone to exhibit signs of radicalisation in these less formal environments and thus these bodies are more likely to notice signs at the micro-level such as individuals suffering identity problems, failing to integrate and feelings of alienation and marginalisation. Additionally, meso-level indicators are also better observed as individuals at danger of radicalisation are more likely to meet likeminded individuals in these settings. These bodies are also much more able to take effective action to counter radicalisation than those who are seen as authority figures and part of the state. The Prevent strategies encourage these community bodies to engage in Prevent, however they are currently exempt from the legal duty. It can be argued to be contradictory that the bodies most likely to notice the signs of radicalisation and be able to effectively tackle it are not subject to the legal duty, while many bodies that only have infrequent contact with individuals are subject to a legal duty (i.e. NHS trusts). The duty could thus be said to have led to a paradoxical two-tier system where more is required of those who can do less and less is required of those who can do more.

Finally, the duty focuses solely on identifying micro and meso-level causes and requiring bodies to consider how to exercise their functions to address them. There is no corresponding duty on the government or public bodies to address the underlying macro-level issues (such as socio-economic inequality and segregation).³⁷ This is significant as the macro-level causes are increasing: for example, a 2015 survey found that 61% of Britons have negative views of Islam, there has been a 43% increase in religiously motivated hate crimes from 2013/14 to 2014/15, white pupils receiving free

³⁷ Section 1 of the Equality Act 2010 did introduce an equality Duty to address socio-economic disadvantage but this has not been brought into force.

school meals are most likely not to achieve 5 A*-Cs at GCSE (72% fail to do so), unemployment for ethnic minorities is 10.2% (cf 4.9% for white individuals), and 50% of Muslims currently live in poverty (cf 18% of society as a whole).³⁸ All of these contribute to socio-economic inequality and segregation which lead to corresponding feelings of alienation, discrimination and dissatisfaction and a search for alternatives. It will be impossible for listed authorities to address these latter micro and meso-level causes while the macro-level causes that lead to them go untackled. Although this problem existed under the previous Prevent strategies, the legalisation of Prevent has only strengthened this problem by requiring listed public bodies to increase their focus upon micro and meso-level causes, deflecting attention from the increasing macro-level issues. For example, schools' attempts to comply with the Prevent Duty could conflict with attempts to address educational inequality, as it is unlikely that a student who has been referred to the police by their school over radicalisation concerns, would be committed to attending additional after school classes to raise their educational attainment (and thus their socio-economic position).

B. What does 'due regard' require?

The 'due regard' standard adopted by the Prevent Duty is well known from the Public Sector Equality Duty.³⁹ In fact, the similarities between the Prevent Duty and the Public Sector Equality Duty are noted in the Prevent Duty guidance with the discharging of the Prevent Duty being argued to help discharge the Public Sector Equality Duty.⁴⁰ The Equality Duty requires public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not.⁴¹ In terms of the Public Sector Equality Duty, due regard requires authorities to collect and utilise equality information,

³⁸ YouGov, "YouGov Survey Results" (YouGov, 2015), *YouGov*, http://cdn.yougov.com/cumulus_uploads/document/qpwv8pljek/InternalResults_150109_views_of_religions.pdf [Accessed March 23, 2016]; H. Corcoran, D. Lader and K. Smith, "Hate Crime, England and Wales, 2014/15" (London: Home Office, 2015), p. 4; T. MacInnes and others, *Monitoring poverty and social exclusion 2015* (York: Joseph Rowntree Foundation 2015), p. 88; F. McGuinness, "Unemployment by ethnic background" (London: House of Commons Library, 2015), p. 3; A. Heath and Y. Li, "Review of the relationship between religion and poverty – an analysis for the Joseph Rowntree Foundation" (2015) 1/2015 *Oxford Centre for Social Investigation Working Paper 1/2015*, 13

³⁹ Equality Act 2010, s 149.

⁴⁰ HM Government, *Revised Prevent Duty Guidance: for England and Wales*, p. 3.

⁴¹ Equality Act 2010, s 149.

embed the duty within the organisation, engage groups with protected characteristics and effectively assess impact.⁴²

Similar considerations are required under the Prevent Duty with specified authorities needing to have an awareness and understanding of the risk of radicalisation in their area, institution or body and give due consideration to the type and scale of activity that will address that risk. They also need to embed the duty within the organisation ensuring staff implement it effectively.⁴³ This requires that staff ‘understand what radicalisation means and why people may be vulnerable to being drawn into terrorism as a consequence of it...to know what measures are available to prevent people from being drawn into terrorism and how to challenge the extreme ideology that can be associated with it’.⁴⁴ Finally, authorities need to maintain appropriate records to show compliance with their responsibilities and provide reports when requested.⁴⁵ Partnership between authorities is particularly important so authorities must show evidence of productive co-operation.⁴⁶

Although the guidance states that the Prevent Duty is relevant to fulfilling the Public Sector Equality Duty in reality the two are likely to strongly conflict. There are numerous protected characteristics within British equality law but particularly relevant here would be race and religion. The Public Sector Equality Duty thus requires public authorities to eliminate race and religion discrimination and to promote equality of opportunity and foster good relations between people of different races and religions. For example, Tower Hamlet had only 8% of pupils leaving school with 5 A-C’s at GCSE in 1990. They took a number of actions under the Public Sector Equality Duty to seek to improve this including increasing the local schools’ ability to work with children who did not have English as a first language (given these were the majority of underperforming pupils) and to work with local mosques (Tower Hamlet’s has a high

⁴² EHRC, “The Essential Guide to the Public Sector Equality Duty: England (and Non-Devolved Public Authorities in Scotland and Wales)” (London: EHRC, 2014).

⁴³ HM Government, *Revised Prevent Duty Guidance: for England and Wales*, p. 3.

⁴⁴ HM Government, *Revised Prevent Duty Guidance: for England and Wales*, p. 4.

⁴⁵ HM Government, *Revised Prevent Duty Guidance: for England and Wales*, p. 5.

⁴⁶ HM Government, *Revised Prevent Duty Guidance: for England and Wales*, p. 4.

Muslim population) to encourage better school attendance. In this way they were able to increase attainment of 5 A-C's at GCSE to 62% by 2012.⁴⁷

In contrast, Prevent requires authorities to be vigilant, to identify those at risk of or going through a process of radicalisation and take measures to address this risk. Although the guidance recognises the danger of far right radicalisation the majority of the focus is on Muslims.⁴⁸ In fact, many of the argued indicators of radicalisation are unique to minority groups (e.g. a failure to integrate only applies to immigrants and only minority groups are likely to experience discrimination). This leads to public authorities themselves having a dual identity that is impossible to reconcile with part focusing on fostering good relations between migrants and non-migrants and Muslims and non-Muslims, while another part focuses upon surveillance and segregation for specific anti-radicalisation activities. Thus when Tower Hamlets' Council were taking action to address the underperformance of its pupils it viewed poor attendance through an equality lens, taking measures to increase the attendance of poor attending children. However, under the Prevent Duty, the Council could now equally view poor attendance through a radicalisation lens and see it as evidence of failed integration, alienation, marginalisation and rejection (all signs of radicalisation) and take steps to counter-radicalise. These measures could potentially alienate pupils, their families and the local community which would make increasing pupil attainment in the future much more difficult.

The conflict between the two duties is especially problematic in relation to tackling radicalisation itself as it undermines and challenges the trust between the public and public bodies which is needed to tackle radicalisation. For example, in 2008 a terrorist plot in Bristol was thwarted due to members of the plotter's mosque referring their concerns to the police.⁴⁹ There is a danger that the legalisation of Prevent will undo the work undertaken under the Public Sector Equality Duty to the extent that in future members of the public may be so alienated that they do not refer suspicions to the

⁴⁷ EHRC, "Public Sector Equality Duty case studies" (EHRC, 2016), <https://www.equalityhumanrights.com/en/advice-and-guidance/individual-benefits> [Accessed August 18, 2016].

⁴⁸ HM Government, *Revised Prevent Duty Guidance: for England and Wales*.

⁴⁹ S. Morris, "Bristol man guilty of suicide bomb plot on shopping centre" (July 17, 2009), *The Guardian*, <http://www.theguardian.com/uk/2009/jul/17/isa-ibrahim-bristol-bomb-guilty> [Accessed March 23, 2016].

police, which could significantly impact the UK's ability to prevent terrorist attacks. Although this conflict was present under the Prevent policies there was flexibility which permitted some degree of reconciliation. The Prevent Duty removes this flexibility by elevating what is required by public bodies which only serves to increase the conflict with the Public Sector Equality Duty.

C. Preventing people from being drawn into terrorism

To prevent people from being drawn into terrorism all staff in the specified authorities need to understand what radicalisation is and why people may be vulnerable to it in order to identify susceptible individuals as soon as possible. However, as mentioned earlier, this is problematic as neither policymakers nor researchers agree on what makes individuals susceptible to radicalisation. The problem with the duty is that while policymakers and researchers do not agree, individuals working at organisations subject to the duty are expected to have both a clear understanding of causes of radicalisation, recognise them and address them. Training (in the form of a Workshop to Raise Awareness of Prevent, WRAP) is provided to front-line staff but this can be said to be contradictory as it focuses solely on scrutinising individuals for micro-level radicalisation factors (such as marginalisation and rejection). Such heavy scrutiny by staff could strain their relationships with individuals at risk of radicalisation and thus undermine any attempts made by staff to counter radicalise.⁵⁰ This problem is further accentuated by the legalisation of Prevent as previously Prevent could be implemented by the most suitable individuals in an organisation with the best expertise. In contrast, the Prevent Duty now requires every frontline worker to be on the lookout for signs of radicalisation regardless of their role or expertise.

This is particularly problematic for professionals who often have conflicting duties. For example, teachers aim to educate and transform their pupils giving them a safe environment in which to explore ideas, which is undermined if they are also required to treat them as potential suspects.⁵¹ Prior to the legalisation of Prevent, professionals struggled with what was required to tackle radicalisation and either avoided it

⁵⁰ L. Blackwood, N. Hopkins and S. Reicher, "From Theorizing Radicalization to Surveillance Practices: Muslims in the Cross Hairs of Scrutiny" [2015] *Political Psychology* 8.

⁵¹ S. Sieckelinck, F. Kaulingfreks and M. De Winter, "Neither Villains Nor Victims: Towards and Educational Perspective on Radicalisation" (2015) 63(3) *British Journal of Educational Studies* 329.

altogether or took a very rigid approach that alienated individuals.⁵² Now the duty is mandatory it is likely that avoiding it is no longer feasible so instead there is a danger of individuals overdoing things from a fear of not being seen to be doing enough. Although subsequently revealed to have been exaggerated, the recent story of a 10-year-old Muslim boy being reported by his school to the police for misspelling terraced as terrorist to read that he lived in a 'terrorist house', is not beyond the bounds of possibility by individuals that are struggling to understand what is required by the duty.⁵³ This can be seen in the huge number of referrals of pupils to police by schools, the majority of which end up with no action being taken. This has led to a huge amount of animosity in teachers who have heavily criticised the Prevent Duty due to the suspicion it creates in the classroom.⁵⁴ Alongside this, in the cases where action is taken, there has been a large increase in the number of children referred to Channel, the Government's de-radicalisation programme (1,839 aged 15 and under in the last four years with 415 of these aged 10 and under).⁵⁵

A final related problem is the heavy focus on Muslims. Although, in contrast to the first two iterations of Prevent under Labour governments, Prevent under the Coalition and Conservative governments has recognised the danger radicalised non-Muslims pose, there is still an extremely heavy focus upon Muslims. Right wing terrorists pose a different threat to Muslim terrorists, with them being much more likely to be lone actors (57% of lone actor terrorist attacks in the UK have been committed by right-wing perpetrators compared to 35% that were religiously inspired).⁵⁶ These attacks are largely motivated by immigration policy, a wish to inspire patriotism and to counter 'Islamisation'. Right-wing perpetrators raise particular concerns as only 15% exhibit changes in behaviour (cf 50% of religiously inspired perpetrators). Consequently, greater focus and efforts are needed to recognise and address radicalisation in right-

⁵² P. Thomas, "Between Two Stools? The Government's 'Preventing Violent Extremism' Agenda" (2009) 80(2) *The Political Quarterly* 282, 288.

⁵³ "Lancashire 'terrorist house' row 'not a spelling mistake'" (January 20, 2016), BBC, <http://www.bbc.co.uk/news/uk-england-lancashire-35354061> [Accessed February 19, 2016].

⁵⁴ R. Adams, "Teachers back motion calling for Prevent strategy to be scrapped" (March 28, 2016), *The Guardian*, <http://www.theguardian.com/politics/2016/mar/28/teachers-nut-back-motion-calling-prevent-strategy-radicalisation-scrapped> [Accessed March 29, 2016].

⁵⁵ S. Kotecha, "More than 400 children under 10 referred for 'deradicalisation'" (January 21, 2016), BBC, <http://www.bbc.co.uk/news/uk-35360375> [Accessed February 19, 2016].

⁵⁶ C. Ellis and others, *Lone-Actor Terrorism: Analysis Paper* (London: Royal United Services Institute, 2016), p. 10; C. Ellis and R. Pantucci, *Lone-Actor Terrorism: 'Leakage' and Interaction with Authorities* (London: Royal United Services Institute, 2016), p. iv.

wing individuals. This is problematic in terms of the Prevent Duty, as the duty acts to increase the relevant authorities' focus on Muslims which can mean other individuals (such as white supremacists) are not as closely monitored. This further conflicts with the Public Sector Equality Duty as it encourages Muslims to be treated differently to white individuals causing further resentment.

D. Enforcing the duty

Implementation of the duty will be monitored by the Home Office with the Secretary of State being able to give directions if they are satisfied that a specified authority has failed to discharge the duty.⁵⁷ The duty will also be monitored by inspectorates that regulate specific authorities for example Ofsted (the Office of Standards in Education, Children's Services and Skills), Monitor (for hospitals), HM Inspectorate of Prisons, HM Inspectorate of Constabulary and HM Inspectorate of Probation. However, of these inspectorates only Ofsted includes an authorities' (here schools) ability to discharge the duty as something an authority will be evaluated on in its inspection handbook.⁵⁸ This is not mentioned in the documentation of other regulators suggesting it is not a high priority. This could result in authorities becoming lax which would be dangerous as, now that Prevent is a legal duty, other bodies may assume authorities are complying with the legal obligations and thus lower their level of vigilance, which allows gaps to appear in the UK's response to terrorism.

The Act makes it clear that a failure in performance of the duty does not confer a cause of action at private law.⁵⁹ There is a similar provision in the Equality Act in relation to the Public Sector Equality Duty but this has not prevented judicial review proceedings being brought against authorities by minority groups who argue that they are in breach of the duty.⁶⁰ For example in *Bracking*, disabled individuals successfully challenged the government's decision to close the Independent Living Fund.⁶¹ Thus it is likely that the Prevent Duty can also be subject to judicial review.

⁵⁷ Counter-Terrorism and Security Act 2015, s 30.

⁵⁸ This forms part of the assessment of the effectiveness of leadership and management: Ofsted, "School Inspection Handbook" (London: Ofsted, 2015), p. 39.

⁵⁹ Counter-Terrorism and Security Act 2015, s 34.

⁶⁰ Equality Act 2010, s 156.

⁶¹ *Stuart Bracking and others v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening)* [2013] EWCA Civ 1345.

In contrast to the Public Sector Equality Duty though, the objects of the Prevent Duty (i.e. those at risk of radicalisation) are extremely unlikely to bring judicial review proceedings, as this would require them to argue that public bodies have not had due regard to prevent them being drawn into terrorism (i.e. from becoming radicalised). What is much more likely is, that in an attempt to legitimise their cause, far right groups would want to bring judicial review proceedings arguing that public bodies are not doing enough to counter the threat posed by Muslims.⁶² This is problematic as it provides these groups with a legitimate public forum in which to express their extreme views. Whether they are able to do this will depend on whether courts determine that they have standing to challenge the decision. This requires that they have 'sufficient interest' in the matter.⁶³ *Fleet Street Casuals* suggests that, as these far right groups are not personally affected by decisions under the Prevent Duty, they will only have standing if the public body acted with impropriety or the issue is serious enough to warrant judicial attention.⁶⁴ In *World Development Movement*, standing was granted to a body not personally affected by a decision because the issue was serious enough to warrant judicial attention. This conclusion was reached due to the seriousness of the allegations, the strength of the claimant's case, the absence of an alternative challenger and the expert and informed character of the claimant.⁶⁵ In relation to challenging a public body's failure to have due regard to preventing terrorism it can be argued that it is serious enough to warrant judicial attention (failure to have due regard could ultimately result in a terrorist attack) and there is nobody else to challenge the decision. Consequently, although courts have a great deal of discretion and so may use this to prevent far right groups challenging public authorities (which in itself far right groups can utilise for positive publicity),⁶⁶ on the basis of *Fleet Street Casuals* and *World Development Movement*, far right groups can argue that they have a legitimate case for possessing sufficient interest required for standing. This possibility has only arisen due to the legalisation of Prevent.

⁶² C. Allen, "Britain First: The 'Frontline Resistance' to the Islamification of Britain" (2014) 85(3) *The Political Quarterly* 354.

⁶³ Supreme Court Act 1981, s 31(3).

⁶⁴ *R v Inland Revenue Commissioners, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, 662, 644.

⁶⁵ *R v Secretary of State for Foreign and Commonwealth Affairs, ex p World Development Movement Ltd* [1995] 1 WLR 386; M. Elliott and R. Thomas, *Public Law* (Oxford: Oxford University Press, 2014), p. 528.

⁶⁶ H. Barnett, *Constitutional and Administrative Law* (Abingdon: Routledge, 2015), p. 613.

Human rights issues

It has been argued that the Prevent Duty accentuates the limitations of the Prevent strategies while at the same time creating new problems. This final section considers the human rights compatibility of Prevent overall (both the strategies and the duty). As mentioned previously, Prevent has two aims, to prevent individuals from becoming radicalised and to de-radicalise (through the Government's de-radicalisation programme, Channel) any individuals already radicalised. There are two main possible human rights challenges that can be made to Prevent under the ECHR. The first is under Article 9 which states that: 'Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance...'. This right has two aspects an absolute right for individuals to believe what they choose (including a right to change beliefs) and a qualified right to manifest these beliefs. In contrast to Articles 8, 10 and 11, Article 9 was declared 'fundamental' by the European Court of Human Rights, as while all the rights contained within Article 8, 10 and 11 can be limited, under Article 9 only the right to manifest beliefs can be – the right for individuals to believe what they choose is absolute.⁶⁷ Prevent requires that public authorities identify individuals at risk of radicalisation (or already being radicalised) and attempt to counter- or de-radicalise them – i.e. attempt to influence or alter what they believe. Thus Prevent appears to infringe the absolute right in Article 9 for an individual to believe whatever they choose. There are however two possible ways to escape this conclusion. One would be for the court to conclude that radical views are not religious views or beliefs and thus not protected by Article 9. However, this might be problematic given that the court has interpreted both religion and belief widely.⁶⁸ Additionally, excluding certain strands of religious views or beliefs from the protection of the Article could set a dangerous precedent for the court, as this allows states to argue that other beliefs should not be protected in the future. An alternative, perhaps stronger, argument would be that individuals that are deterred from radicalisation or de-radicalised are not forced to change their beliefs by the state but do so voluntarily. Channel is a voluntary programme so individuals identified as radicalised are not

⁶⁷ *Kokkinakakis v Greece* (1994) 17 E.H.R.R. 397, 419.

⁶⁸ For example it has been held to include pacifism (*Arrowsmith v United Kingdom* (1981) 3 E.H.R.R. 218) and veganism (*CW v United Kingdom* (1993) 16 E.H.R.R. CD44).

required to undertake it when they are referred and Prevent does not require public authorities to make individuals have any particular views – thus ultimately neither stop individuals from possessing radical views if they choose. Given the importance of Prevent to the UK's counter-terrorism strategy, if the European Court of Human Rights refused to accept either argument and found that Prevent breached the absolute right in Article 9 this is likely to substantially increase the UK Government's opposition to the Court and lead to increased pressure for a British Bill of Rights/repeal of the Human Rights Act.

An argument could also be made that Prevent is discriminatory under Article 14. Article 14 is not a free-standing right but must be utilised in conjunction with another convention right. There are four requirements that must be present for there to be a breach of Article 14: (i) the treatment must fall within the 'ambit' of another right; (ii) the treatment must be on a ground of discrimination contained within Article 14; (iii) the treatment must be discriminatory; (iv) the treatment must not be capable of justification. Prevent seeks to deter individuals from possessing radical beliefs consequently it can be argued that this falls within the ambit of Article 9. This treatment can be said to be discriminatory on grounds of race and/or religion (both are explicitly listed within Article 14). The treatment would be discriminatory as although Prevent applies to anyone with radical views (and thus is not directly discriminatory) in terms of guidance and training it is heavily focused upon Muslims with radical views and thus Muslims are disproportionately subject to it (i.e. it is indirectly discriminatory).⁶⁹ Given that the first three requirements are satisfied, the decisive issue is whether the discriminatory treatment under Prevent can be justified (i.e. whether it is proportionate to meet a legitimate aim). In relation to racial and religious discrimination the court requires very weighty reasons to justify the treatment.⁷⁰ Here the reason would be national security (Prevent aims to prevent terrorism) which is likely to be a weighty reason and thus constitute a legitimate aim. The issue is whether Prevent is proportionate to meet this legitimate aim. In areas of national security the court does allow a wide margin of appreciation so they may accept that Prevent is proportionate

⁶⁹ *Thlimmenos v Greece* (2001) 31 E.H.R.R. 15; *DH and others v Czech Republic* (2008) 47 E.H.R.R. 3.

⁷⁰ *Timishev v Russia* (2007) 44 E.H.R.R. 37; *Hoffmann v Austria* (1994) 17 E.H.R.R. 293.

(especially given that many other European countries have similar approaches) however this conclusion is not obvious.

Conclusion

The introduction of the Prevent Duty in 2015 was intended to increase the UK's ability to prevent terrorism by ensuring a consistent approach between front-line public bodies. However, it is likely that the duty will prove counter-productive. This is because legalising Prevent has: accentuated the limitations of the Prevent strategies; removed the flexibility inherent to a policy approach that allowed the limitations to be minimised; while at the same time creating new problems.

In terms of accentuating the limitations, the Prevent Duty has increased the focus on micro and meso-causes of radicalisation (i.e. individual and group characteristics) while further marginalising the macro-causes (i.e. societal causes). Alongside this it has required greater focus by a wider range of public sector frontline workers on a conception of 'radical' that is uncertain with there being no agreement what makes a radical or what characteristics to be concerned about. Furthermore, it has increased the conflict between counter-radicalisation/de-radicalisation on the one hand, and the Public Sector Equality Duty's requirements to eliminate discrimination and foster good relations. This is likely to increase discrimination and segregation and fuel feelings of alienation and resentment which are factors that potentially lead to radicalisation. This is especially true given that the focus is still heavily on Muslims and migrants while the much harder to identify right-wing radicals are subject to a much lower level of scrutiny.

The legalisation of Prevent has also created new problems. Thus the Prevent Duty requires specified authorities to do more than non-specified authorities, however, many non-specified authorities are often better placed to identify and address radicalisation. Consequently the duty requires more from the bodies who can do less and less of those who can do more. Additionally, in a similar fashion to the Public Sector Equality Duty, it is likely that the Prevent Duty can be judicially reviewed. In contrast to the Equality Duty though, it is unlikely that it will be those primarily affected by the duty that will bring legal proceedings. Instead, it is likely to be extreme right-wing groups, who are potentially given a legitimate legal platform to argue that specified authorities are not doing enough to counter the threat posed by Muslims and

migrants. Finally, it appears that the Prevent Duty infringes Article 9 ECHR and possibly Article 14 combined with Article 9. If a breach of Article 14 combined with Article 9 was found the Government could revise Prevent so it is less discriminatory. However, finding that Prevent infringes the absolute right in Article 9 would invalidate all possible models of Prevent (as all would involve attempting to change what individuals' believe) and ramp up pressure for human rights reform in the UK.

It is clear from the significant rise in terrorist atrocities, that states face an increased threat from terrorism and particularly from terrorism committed by its own citizens so it is legitimate that states have mechanisms to prevent terrorist attacks. However, this has to be balanced against the rights of a state's citizens to liberty and non-discrimination. Although not perfect, the Prevent strategies were closer to achieving this balance than the Prevent Duty as they allowed flexibility to minimise the more harmful effects. In contrast, the Prevent Duty removes this flexibility while accentuating the problems of the strategies and creating new problems. These are likely to undermine Prevent and increase rather than reduce the UK's ability to prevent terrorism. Consequently, the UK would be better served by the repeal of the duty and concentrating on improving the Prevent strategies.